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DEPARTMENT OF JUSTICE

Antitrust Division

***United States v. Intuit Inc., et al*.; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States of America v. Intuit Inc. and Credit Karma, Inc.*, Civil Action No. 1:20-cv-03441-ABJ. On November 25, 2020 the United States filed a Complaint alleging that the proposed acquisition by Intuit Inc. of Credit Karma, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Intuit and Credit Karma to divest Credit Karma's digital do-it-yourself ("DDIY") tax preparation business, Credit Karma Tax, along with the products, intellectual property, and other related assets and rights that Credit Karma uses to provide DDIY tax preparation products to consumers.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.gov/atr and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the *Federal Register*. Comments should be directed to Robert A. Lepore, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8000, Washington, DC 20530 (telephone: 202-476-0375).

Suzanne Morris,

Chief, Premerger and Division Statistics,

Antitrust Division.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. INTUIT INC. and CREDIT KARMA, INC., *Defendants*.	Civil Action No.: 1:20-cv-03441-ABJ Judge Amy Berman Jackson

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to prevent Intuit Inc. from acquiring Credit Karma, Inc. The United States alleges as follows:

I. INTRODUCTION

1. Each year, nearly 140 million individuals, families, and households around the country file U.S. federal and state income taxes. The tens of millions of filers who choose a digital do-it-yourself ("DDIY") tax preparation product have some choice, but one product dominates this market: TurboTax. Intuit, the maker of TurboTax, is by far the largest provider of DDIY tax preparation products, with a 66% market share. For more than a decade, Intuit's dominance has been nearly as certain as taxes themselves.

2. Since 2008, Credit Karma has operated a popular personal finance platform that offers consumers a variety of free services, including credit monitoring and financial management. When Credit Karma launched its own DDIY tax preparation product in 2017, it was the first meaningful DDIY tax preparation product entry in at least a decade. Credit Karma's goal was clear: "Just like it did with credit scores in 2008, Credit Karma plans to change the tax preparation industry so people won't ever have to

pay to do their taxes again."[1] Credit Karma quickly became a significant competitor to Intuit, despite its recent entry and relatively small market share, because Credit Karma has always offered its DDIY tax preparation product to consumers entirely for free. This business model remains unique among DDIY tax preparation product providers.

3. Through Credit Karma's personal finance platform, Credit Karma offers its more than 100 million members free personal finance tools, such as free credit scores and monitoring, and tailored, third-party financial offers, including credit card, personal loan, and refinancing opportunities. Credit Karma is paid only by the third parties, and only when consumers take advantage of these customized offers. Credit Karma can take the data gathered from tax filings, with the filers' consent, to improve Credit Karma's offerings to its members. This, in turn, improves the likelihood that a consumer will take advantage of the offer. This process enables Credit Karma to provide a DDIY tax preparation product for free regardless of the U.S. federal or state tax forms used and complexity of the tax return.

4. Thanks to its always-free strategy and enormous member base, Credit Karma became the fifth-largest DDIY tax provider after its first tax season and has grown significantly each year since, with over two million filers in 2020. Credit Karma has projected additional growth in the future as its product continues to get traction, and as it continues to add features and expand the scope of its DDIY tax preparation product.

5. Although as the new player in the market Credit Karma serves only 3% of customers, Intuit has recognized that Credit Karma represents its most disruptive competitor for DDIY tax preparation. Credit Karma's always-free model poses a unique threat to Intuit because Intuit (and all other DDIY tax preparation providers) charges consumers for DDIY tax preparation products for anything beyond the most basic filings as well as often for state filings. Intuit relies on these fees for revenue. For example,

[1] https://www.creditkarma.com/ourstory.

Intuit charges individual filers substantial fees to use TurboTax to claim itemized deductions, report investment income, or claim self-employed business expenses, among other complex tax filings. The majority of TurboTax customers pay Intuit to use one of its DDIY tax preparation products. By contrast, Credit Karma offers these same services for federal and state tax returns to individuals for free, and there is no up-charging for additional complexity.

6. Over the last four tax seasons, Credit Karma has begun to erode Intuit's dominance in the market for the development, provision, operation, and support for DDIY tax preparation products. Credit Karma has constrained Intuit's pricing, and has also limited Intuit's ability to degrade the quality and reduce the scope of the free version of TurboTax in order to drive customers to the paid versions. Customer losses to Credit Karma have also represented lost revenue to Intuit because many switchers were purchasing TurboTax paid products, not using TurboTax free offerings. Faced with stiff competition from Credit Karma and mounting losses of paying customers to Credit Karma's always-free product, Intuit responded aggressively. Intuit lowered the prices and increased the quality of some of its products. This head-to-head competition with Credit Karma has benefitted many of the millions of Americans who use TurboTax each year, constraining Intuit's ability to charge higher prices and leading Intuit to increase the quality of its products.

7. Intuit's proposed acquisition of Credit Karma will eliminate the growing threat posed by Credit Karma and further cement TurboTax's dominance. If the proposed transaction proceeds in its current form, consumers are likely to pay higher prices, receive lower quality products and services, and have less choice for DDIY tax preparation products. To prevent those harms, the Court should enjoin this unlawful transaction.

II. JURISDICTION AND VENUE

8. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

9. Defendants are engaged in, and their activities substantially affect, interstate commerce. Intuit and Credit Karma both provide DDIY tax preparation products that serve federal and state tax filers throughout the United States. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. §§ 1391(b) and (c).

11. This Court has personal jurisdiction over each Defendant. Intuit and Credit Karma both transact business and are found within the District of Columbia.

12. Intuit and Credit Karma have each consented to personal jurisdiction and venue in this jurisdiction for purposes of this action.

III. DEFENDANTS AND THE PROPOSED TRANSACTION

13. This case arises from Intuit's proposed acquisition of Credit Karma for approximately $7.1 billion, pursuant to an Agreement and Plan of Merger entered on February 24, 2020.

14. Intuit is a large, public software company based in Mountain View, California that offers tax preparation, accounting, payroll, and personal finance solutions to individuals and small businesses. Intuit offers DDIY tax preparation products under the TurboTax brand. Approximately 41 million individuals filed individual federal tax returns in 2020 using TurboTax. Intuit, through its TurboTax business, is the largest provider of DDIY tax preparation products for U.S. federal and state tax returns. In 2019, Intuit earned over $6.5 billion in revenue, including over $2.5 billion from sales of TurboTax products.

15. Credit Karma is a privately-held technology company based in San Francisco, California that offers an online and mobile personal finance platform. Credit Karma's platform provides individuals with access to free credit scores, credit monitoring, and DDIY tax preparation, among other products and services. Credit Karma is home to more than one hundred million customers, and in any given month, over thirty-five million customers are actively engaged on the Credit Karma platform. Credit Karma's DDIY tax preparation business, known as Credit Karma Tax, is the fifth-largest provider of DDIY tax preparation products for U.S. federal and state tax returns. Approximately two million individuals filed U.S. federal tax returns with Credit Karma Tax in 2020.

IV. THE RELEVANT MARKET

A. Relevant Product Market

16. Intuit and Credit Karma compete to develop, provide, operate, and support DDIY tax preparation products that help individuals file U.S. federal and state tax returns ("DDIY tax preparation products") to millions of Americans. DDIY tax preparation products enable individuals to prepare their own U.S. federal and state tax returns on the provider's website or mobile application or using the provider's software installed on a personal computer. The development, provision, operation, and support of DDIY tax preparation products is a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

17. A hypothetical monopolist would impose at least a small but significant and non-transitory increase in the price of DDIY tax preparation products. Such a price increase for these products would not be defeated by substitution to alternative products. Other methods of preparing individual U.S. federal or state income tax returns are not close substitutes for DDIY tax preparation products because those methods of tax

preparation do not offer comparable functionality or are less convenient, more cumbersome, or more expensive. For example, hiring an accountant—*i.e.*, "assisted tax preparation"—is substantially more expensive and less convenient than using DDIY tax preparation products. Similarly, completing U.S. federal and state tax returns manually using the "pen-and-paper" method is a substantially more tedious and error-prone process and thus less efficient than using DDIY tax preparation products.

B. Relevant Geographic Market

18. The DDIY tax preparation products that Intuit and Credit Karma offer assist individuals with filing their U.S. federal and state income tax returns. Customers that are required to file tax returns in jurisdictions outside of the United States cannot use the DDIY tax preparation products at issue for those purposes. Similarly, DDIY tax preparation products that have been designed to assist individuals with filing tax returns in jurisdictions outside of the United States cannot be used by customers to prepare U.S. federal and state tax returns. Both customers and suppliers of DDIY tax preparation products predominantly are located within the United States. However, because many DDIY tax preparation products are provided over the internet, there do not appear to be any physical restrictions on the location of suppliers or customers—that is, any consumer who is required to file U.S. taxes can generally choose between the same DDIY tax preparation products, regardless of whether the customer or DDIY product supplier is physically located inside the United States. Therefore, a worldwide market is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18 for the purposes of analyzing this transaction.

V. INTUIT'S ACQUISITION OF CREDIT KARMA IS LIKELY TO RESULT IN ANTICOMPETITIVE EFFECTS

A. The Transaction is Presumed Likely to Enhance Intuit's Market Power and Substantially Less Competition

19. The relevant market is highly concentrated and would become significantly more concentrated as a result of the proposed transaction. The more concentrated a market and the more a transaction increases concentration in that market, the more likely it is that the transaction will reduce competition. Concentration is typically measured by market shares and by the well-recognized Herfindahl–Hirschman Index (HHI). If the post-transaction HHI would be more than 2,500 and the change in HHI more than 200, the transaction is presumed likely to enhance market power and substantially lessen competition. *See*, *e.g.*, *United States v. Anthem, Inc.*, 855 F.3d 345, 349 (D.C. Cir. 2017).

20. In 2020, approximately 41 million individuals filed a federal tax return using Intuit's TurboTax, accounting for about 66% of the total market for DDIY tax preparation products. During the same time period, approximately two million individuals filed a federal tax return using Credit Karma's DDIY tax preparation product, accounting for about 3% of the total market. H&R Block, the second-largest provider of DDIY tax preparation products, has about a 15% market share. The post-transaction HHI would be over 5,000, with an increase in excess of 400. Given the high concentration level and increases in concentration in the market for DDIY tax preparation products, the proposed acquisition presumptively violates Section 7 of the Clayton Act.

21. These concentration measures understate the likely anticompetitive effects of the transaction. Because Credit Karma is the only competitor that provides DDIY tax preparation products for free to consumers regardless of the complexity of the federal tax return or state tax return required, it plays a uniquely disruptive role in the market. Further, Credit Karma is poised to continue with substantial growth in the near- and long-term.

B. The Transaction Would Eliminate Head-To-Head Competition Between Intuit and Credit Karma and an Important Competitive Constraint

22. Intuit's acquisition of Credit Karma would remove a significant competitor that has been an important competitive constraint on Intuit. Intuit's TurboTax offers consumers a limited free option for simple individual federal tax filings, but it charges consumers fees for more complicated federal tax filings, including filings with itemized deductions, investment income, and self-employed income and expenses. Intuit also charges consumers fees for their state tax filings. Unlike Intuit, Credit Karma does not charge consumers for any of the products and services that it offers. Instead, Credit Karma uses the data that it collects from users to create targeted offers on financial products and services and collects a commission from financial institutions when users accept these offers. In addition, Credit Karma has an existing customer base of over a hundred million users that it can cost-effectively target for DDIY tax preparation products.

23. Intuit and Credit Karma compete head-to-head to provide DDIY tax preparation products to tens of millions of Americans. This head-to-head competition has led to lower prices and increased quality for DDIY tax preparation products. In response to competition from Credit Karma, Intuit has strategically lowered prices on some of its DDIY tax preparation products, such as by extending promotions for free state tax filing with TurboTax (up to a $50 value). In addition, to compete with Credit Karma, Intuit has expanded the scope and quality of services it offers to TurboTax users at no additional cost to consumers, including by granting customers free access to their prior year's tax returns.

24. Moreover, without this merger, competition between Intuit and Credit Karma would intensify as Credit Karma continues to grow and erode Intuit's substantial

base of TurboTax customers. Credit Karma has consistently and significantly grown its market share year over year and is forecasting continued significant growth over the next few years.

25. By eliminating head-to-head competition between Intuit and Credit Karma, the proposed acquisition in its current form would result in higher prices, lower quality, and reduced choice. Thus, the merger would substantially lessen competition and harm millions of consumers in the development, provision, operation, and support of DDIY tax preparation products.

VI. ABSENCE OF COUNTERVAILING FACTORS

26. New entry and expansion by competitors likely will not be timely and sufficient in scope to prevent the acquisition's likely anticompetitive effects. Apart from Credit Karma, no other companies have successfully entered the market for the development, provision, operation, and support of DDIY tax preparation products in over a decade. As Intuit's and Credit Karma's executives have recognized, barriers to entry are high. Barriers to entry and expansion include (i) large sunk costs and significant other expenditures to develop easy-to-use, robust DDIY tax preparation products; (ii) significant time and expense to build a trusted brand; and (iii) substantial marketing dollars and effort to promote the DDIY tax preparation products and attract customers.

27. The proposed acquisition is unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that are likely to occur.

VII. VIOLATION ALLEGED

28. The United States hereby incorporates the allegations of paragraphs 1 through 27 above as if set forth fully herein.

29. Intuit's proposed acquisition of Credit Karma is likely to substantially lessen competition in the relevant market, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

30. Unless enjoined, the proposed acquisition would likely have the following anticompetitive effects, among others:

(a) eliminate present and future competition between Intuit and Credit Karma in the market for the development, provision, operation, and support of DDIY tax preparation products;

(b) cause prices for DDIY tax preparation products to be higher than they would be otherwise;

(c) lessen innovation; and

(d) reduce quality, service, and choice for Americans that file U.S. federal and state tax returns.

VIII. REQUEST FOR RELIEF

31. The United States requests that the Court:

(a) adjudge Intuit's acquisition of Credit Karma to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) permanently enjoin Defendants from consummating Intuit's proposed acquisition of Credit Karma or from entering into or carrying out any other agreement, understanding, or plan by which the assets or businesses of Intuit and Credit Karma would be combined;

(c) award the United States its costs of this action; and

(d) grant the United States such other relief the Court deems just and proper.

Dated: November 25, 2020

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

MAKAN DELRAHIM (D.C. #457795)
Assistant Attorney General for Antitrust

MICHAEL F. MURRAY (D.C. #1001680)
Deputy Assistant Attorney General

KATHLEEN S. O'NEILL
Senior Director of Investigations & Litigation

ROBERT A. LEPORE
Chief
Transportation, Energy & Agriculture Section

KATHERINE A. CELESTE
Assistant Chief
Transportation, Energy & Agriculture Section

BRIAN HANNA*
MICHELE B. CANO
J. RICHARD DOIDGE
RACHEL A. FLIPSE
JOHN A. HOLLER
MICHELLE LIVINGSTON (D.C. #461269)
MICHAEL T. NASH
SETH J. WIENER (D.C. #995383)

Attorneys for the United States

U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
Tel: (202) 598-8360
Fax: (202) 616-2441
Email: brian.hanna2@usdoj.gov

*LEAD ATTORNEY TO BE NOTICED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTUIT INC.,

and

CREDIT KARMA, INC.,

Civil Action No.: 1:20-cv-03441-ABJ

Judge Amy Berman Jackson

Defendants.

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on [Month, Day], 2020;

AND WHEREAS, the United States and Defendants, Intuit Inc. ("Intuit") and Credit Karma, Inc. ("Credit Karma"), have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to make a divestiture to remedy the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants represent that the divestiture and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Acquirer" means Square or any other entity to which Defendants divest the Divestiture Assets.

B. "Intuit" means Defendant Intuit Inc., a Delaware corporation with its headquarters in Mountain View, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Credit Karma" means Defendant Credit Karma, Inc., a Delaware corporation with its headquarters in San Francisco, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Square" means Square, Inc., a Delaware corporation with its headquarters in San Francisco, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "CKT" means Credit Karma Tax, Inc., a wholly owned subsidiary of Credit Karma, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. "Divestiture Assets" means all of Defendants' rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, related to or used or held for use in connection with CKT, including, but not limited to:

1. the CKT Products;

2. the CKT IP;

3. the Credit Karma IP License;

4. the Credit Karma Trademarks License;

5. all tangible personal property, including, but not limited to, servers and other computer hardware; research and development activities; all fixed assets, personal property, inventory, office furniture, materials, and supplies;

6. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings;

7. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

8. all records and data, including (a) customer lists, accounts, sales, and credit records, (b) manuals and technical information Credit Karma provides to its own employees, customers, suppliers, agents, or licensees, (c) records and research data concerning historic and current research and development activities, and (d) drawings, blueprints, and designs; and

9. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

G. "Divestiture Date" means the date on which the Divestiture Assets are divested to Acquirer.

H. "Acquirer's Tax Landing Page" means the website on which Acquirer will provide the CKT Products and any applicable internet pages under such domain or sub-domain.

I. "CKT Actual Filers" means customers who, at any time on or before October 16, 2021, have successfully electronically filed federal or state income tax returns using the CKT Products.

J. "CKT E-File Product Website" means http://tax.creditkarma.com, including any applicable internet pages under such domain or sub-domain.

K. "CKT IP" means all intellectual property owned by CKT.

L. "CKT Landing Page" means www.creditkarma.com/tax, including any applicable internet pages under such domain or sub-domain.

M. "CKT New Member" means any customer who either (a) creates a Credit Karma account via the CKT Landing Page or (b) creates a Credit Karma account via any internet page other than the CKT Landing Page and, within 24 hours of creating that Credit Karma account, provides Credit Karma with the additional authentication required for filing a U.S. federal tax return.

N. "CKT Product Link" means any link, advertisement, reference to tax or tax filing (including "file now" or similar links) with respect to CKT Products, or the CKT Tax Button, on the applicable internet website menu banners and pages.

O. "CKT Products" means all products and services, including all digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services developed, manufactured, delivered, made commercially available, marketed, distributed, supported, sold, offered for sale, imported or exported for resale, or licensed out by, for, or on behalf of CKT.

P. "CKT Tax Button" means (a) with respect to the Credit Karma Website, the link that is labeled "Tax," and (b) with respect to any CKT mobile application, the navigation element that is labeled "Tax."

Q. "Credit Karma IP" means all intellectual property, except for the Credit Karma Trademarks, owned by Credit Karma that is used or held for use in connection with Credit Karma Products and which is embodied in or related to the development, provision, operation, or support of digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services.

R. "Credit Karma IP License" means a non-exclusive, worldwide, fully paid-up, perpetual, irrevocable, non-transferable license to the Credit Karma IP for Acquirer's use in the development, provision, operation, and support of all existing and future digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services.

S. "Credit Karma New Member" means any customer who creates a Credit Karma account for the first time following the Divestiture Date and prior to the later of (a) April 16, 2021, or (b) the date of any federal filing deadline required by the Internal Revenue Service for federal income tax returns and tax payments for the tax year ending December 31, 2020, if such federal filing deadline is expressly extended beyond April 15, 2021, excluding persons who were referred to Credit Karma by Intuit.

T. "Credit Karma Products" means all products and services, excluding CKT Products, provided by Defendants using the "Credit Karma" brand name.

U. "Credit Karma Trademarks" means all trademarks, service marks, internet domain names, trade dress, trade names, other names, or source identifiers, including all such registrations, applications for registrations, and associated goodwill, owned by Credit Karma that is used or held for use in connection with Credit Karma Products and which is embodied in or related to the development, provision, operation, or support of digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services.

V. "Credit Karma Trademarks License" means a limited, non-exclusive, non-transferrable, non-assignable, non-sublicensable license to the Credit Karma Trademarks for Acquirer's use in the development, provision, operation, and support of all existing and future digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services during the Year 1 Period.

W. "Credit Karma Website" means www.creditkarma.com and any applicable internet pages under such domain or sub-domain.

X. "Other Tax Product" means, except for the Divestiture Assets, any digital do-it-yourself personal United States federal or state income tax return preparation and e-filing product or service, including, but not limited to, Intuit's TurboTax.

Y. "Protected User" means any person who is a CKT Actual Filer, a Tax Intent User, or a Credit Karma New Member.

Z. "Relevant Personnel" means:

1. all full-time, part-time, or contract employees of CKT at any time between February 24, 2020, and the Divestiture Date; and

2. all full-time, part-time, or contract employees of Credit Karma, wherever located, who dedicated at least 50% of such person's time to the development, provision, operation, or support of the digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services at any time between October 1, 2019, and September 30, 2020.

The United States, in its sole discretion, will resolve any disagreement regarding which employees are Relevant Personnel.

AA. "Tax Intent User" means any customer (a) in the case of a user of the Credit Karma Website, (i) who clicks on a CKT Product Link, (ii) who accesses the CKT Tax Landing Page or the CKT E-File Product Website, or (iii) who accesses the Credit Karma Website, CKT Tax Landing Page, or CKT E-File Product Website through a link provided through electronic mail or other notifications sent by Defendants on behalf of Acquirer or otherwise pursuant to Paragraph IV.M.1. or through other promotional or marketing materials distributed or made available by Acquirer, and (b) in the case of a user of the Credit Karma mobile application, (i) who clicks on a CKT Product Link or (ii) who accesses the application through a link provided through electronic mail or other

notifications sent by Defendants on behalf of Acquirer or otherwise pursuant to Paragraph IV.M.1. or through other promotional or marketing materials distributed or made available by Acquirer.

BB. "Year 1 Period" means the period beginning on the Divestiture Date and ending on October 16, 2021.

CC. "Year 2 Period" means the period beginning on October 17, 2021, and ending on the later of (a) June 14, 2022, or (b) 60 calendar days following any extension of the federal filing deadline required by the Internal Revenue Service for federal income tax returns and tax payments for the tax year ending December 31, 2021, if such federal filing deadline is expressly extended beyond April 15, 2022.

III. APPLICABILITY

A. This Final Judgment applies to Intuit and Credit Karma, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

IV. DIVESTITURE

A. Defendants are ordered and directed, within 30 calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to Square or to another Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total and will notify the Court of any extensions.

B. Defendants must use their best efforts to divest the Divestiture Assets as expeditiously as possible and may not take any action to impede the certification, operation, or divestiture of the Divestiture Assets.

C. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business of the development, provision, operation, and support of digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services, and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.

D. The divestiture must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the development, provision, operation, and support of digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services.

E. The divestiture must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendants gives Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

F. In the event Defendants are attempting to divest the Divestiture Assets to an Acquirer other than Square, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must

provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due-diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

G. Defendants must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information; and (3) access to all financial, operational, or other documents and information customarily provided as part of a due diligence process. Defendants also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

H. Defendants must cooperate with and assist Acquirer to identify and hire all Relevant Personnel.

1. Within 10 business days following the filing of the Complaint in this matter, Defendants must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer, the United States, or the monitoring trustee, Defendants must provide to Acquirer, the United States, and the monitoring trustee additional information related to Relevant Personnel, name, job title, reporting relationships, past experience, responsibilities, training and educational history, relevant certifications, and job performance evaluations. Defendants must also provide to Acquirer current, recent, and accrued compensation and benefits, including most recent bonus paid, aggregate annual

compensation, current target or guaranteed bonus, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to the Relevant Personnel. If Defendants are barred by any applicable law from providing any of this information, Defendants must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information.

3. At the request of Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by Acquirer to employ any Relevant Personnel. Interference includes, offering to increase the compensation or benefits of Relevant Personnel unless the offer is part of a company-wide increase in compensation or benefits granted that was announced prior to February 24, 2020, or has been approved by the United States, in its sole discretion. Defendants' obligations under this Paragraph IV.H.4. will expire 12 months after the divestiture of the Divestiture Assets pursuant to this Final Judgment.

5. For Relevant Personnel who elect employment with Acquirer within 12 months of the Divestiture Date, Defendants must waive all non-compete and non-disclosure agreements, vest and pay on a prorated basis any bonuses, incentives, other salary, benefits, or other compensation fully or partially accrued at the time of transfer to Acquirer; vest all unvested pension and other equity rights; and provide all other benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including, any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by

Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 12 months from the date on which any Relevant Personnel is hired by Acquirer, Defendants may not solicit to rehire Relevant Personnel who were hired by Acquirer within 12 months of the Divestiture Date unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that Defendants may solicit to rehire that individual. Nothing in this Paragraph IV.H.6. prohibits Defendants from advertising employment openings using general solicitations or advertisements and rehiring Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

I. Defendants must warrant to Acquirer that (1) the Divestiture Assets will be operational and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets; and (3) Defendants have disclosed all encumbrances on any part of the Divestiture Assets, including on intangible property. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets.

J. Defendants must assign, subcontract, or otherwise transfer all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Divestiture Assets, including all supply and sales contracts, to Acquirer; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

K. Defendants must make best efforts to assist Acquirer to obtain all necessary licenses, registrations, certifications, and permits to operate the Divestiture Assets. Until Acquirer obtains the necessary licenses, registrations, certifications, and permits, Defendants must provide Acquirer with the benefit of Defendants' licenses, registrations, certifications, and permits to the full extent permissible by law.

L. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, Defendants must enter into a transition services agreement for engineering, product support, data migration, information security, information technology, technology infrastructure, customer support, marketing, finance, accounting, and knowledge-transfer related to the tax industry, for a period of up to 24 months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendments to or modifications of any provision of a transition services agreement are subject to approval by the United States, in its sole discretion. Acquirer may terminate a transition services agreement, or any portion of a transition services agreement, without penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

M. For the duration of the Year 1 Period Defendants:

1. must distribute Acquirer-created marketing content to CKT Actual Filers via electronic mail and mobile application notifications, with the same frequency of distribution as CKT-created marketing content for the 12 months prior to the Divestiture Date;

2. must continue to make the CKT mobile application available through the same mobile application distribution channels as for the 12 months prior to the Divestiture Date;

3. must use reasonable best efforts to support Acquirer's efforts to obtain consents of customers under Section 7216 of the Internal Revenue Code and Treasury Regulations thereunder;

4. must continue to make the CKT Products available to customers at all times with at least the same level of quality, functionality, availability, access, and customer support as was provided by Defendants during the 12 months prior to the Divestiture Date;

5. (a) must cause any person who clicks on a CKT Product Link or accesses the CKT Landing Page or CKT E-File Product Website to be directed to the CKT Products, and (b) must not (i) direct or cause to be directed any person who clicks on a CKT Product Link or accesses the CKT Landing Page or CKT E-File Product Website to any Other Tax Product, or (ii) show any person who clicks on a CKT Product Link or accesses the CKT Landing Page or CKT E-File Product Website any links to or advertisements for any Other Tax Product;

6. must not market, provide any links to, or otherwise make available Other Tax Products on the Credit Karma Website or mobile application, including the CKT Landing Page, to any user of the Credit Karma Website or mobile application who (a) is not logged in to the Credit Karma Website or mobile application or (b) is a Protected User; and

7. to the extent Defendants market, provide any links to, or otherwise make available Other Tax Products on the Credit Karma Website or mobile application, including the CKT Landing Page, to any user of the Credit Karma Website or mobile application who is both (a) logged in to the Credit Karma Website or mobile application and (b) not a Protected User, Defendants must also market the CKT Products on equal and non-discriminatory terms and in a manner that does not reduce the efficacy or

prominence of the CKT Tax Button and is not otherwise inconsistent with the terms of Section IV.

N. For the duration of the Year 2 Period, Defendants:

1. must distribute Acquirer-created marketing content to CKT Actual Filers via up to 6 electronic mail and mobile application notifications; and

2. (a) must cause any CKT Actual Filers who click on a CKT Product Link or access the CKT Landing Page or CKT E-File Product Website to be directed to the Acquirer's Tax Landing Page, and (b) without first verifying that a person is not a CKT Actual Filer or Credit Karma New Member, must not (i) direct or cause to be directed any person who clicks on a CKT Product Link or accesses the CKT Landing Page or CKT E-File Product Website to any Other Tax Product, or (ii) show any person who clicks on a CKT Product Link or accesses the CKT Landing Page or CKT E-File Product Website any links to or advertisements for any Other Tax Product.

O. For the duration of both the Year 1 Period and the Year 2 Period, Defendants:

1. must maintain the CKT Tax Button; and

2. must not market or promote to any CKT Actual Filers any products or services that compete, either directly or indirectly, with the CKT Products, via electronic mail marketing that is (a) deliberately directed at such CKT Actual Filers based on their statuses as CKT Actual Filers or (b) delivered to CKT Actual Filers at the email addresses associated with such CKT Actual Filers' accounts with Credit Karma.

P. Unless Acquirer directs Defendants to retain such data for a longer period, and except as required in Paragraph IV.Q., within 30 calendar days after the Divestiture Date, Defendants must delete any data collected from or provided by CKT Actual Filers during the tax preparation or filing process that Credit Karma has in its possession, including, but not limited to, (a) any such data CKT has provided to Credit Karma

pursuant to the consent of customers under Section 7216 of the Internal Revenue Code and Treasury Regulations thereunder and (b) any such data indicating whether a CKT Actual Filer is a CKT New Member. If Acquirer directs Defendants to retain such data for a longer period, Defendants must delete such data within 30 calendar days after Acquirer directs Defendants to delete such data. Within 5 calendar days of Defendants' deletion of this data, Defendants must (i) provide to the United States and to the monitoring trustee a written certification, signed by Defendants' respective General Counsels, that all data covered by this Paragraph IV.P. has been deleted and is no longer in the possession or control of Defendants and (ii) provide a copy of such certification to Acquirer.

Q. Defendants may maintain information to indicate whether a customer is a CKT Actual Filer solely for the purpose of complying with Paragraphs IV.L., IV.M., IV.N., IV.O., and IV.P. Within 10 calendar days following the end of the Year 2 Period, Defendants must delete (a) the data that Defendants maintain for purposes of complying with Paragraphs IV.L., IV.M., IV.N., IV.O., and IV.P. and which identify a customer as a CKT Actual Filer and (b) any remaining data that Defendants possess that could be used to identify a customer as a CKT Actual Filer or as a CKT New Member, including any data described in Paragraph IV.P. Within 5 calendar days of Defendants' deletion of this data, Defendants must (i) provide to the United States and to the monitoring trustee a written certification, signed by Defendants' respective General Counsels, that all data covered by this Paragraph IV.Q. has been deleted and is no longer in the possession or control of Defendants, and (ii) provide a copy of such certification to Acquirer.

R. If any term of an agreement between Defendants and Acquirer, including, but not limited to, an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the period specified in Paragraph IV.A., Defendants must immediately notify the United States of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at a price and on terms as are then obtainable upon reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to the United States and the divestiture trustee within 10 calendar days after the divestiture trustee has provided the notice of proposed divestiture required under Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, that are approved by the United States.

E. The divestiture trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable

solely to the divestiture trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, that are approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and Defendants are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States may, in its sole discretion, take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the date of the sale of the Divestiture Assets, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendants and the trust will then be terminated.

H. Defendants must use their best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books,

records, and facilities of the Divestiture Assets. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants may not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact with any such person.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide the United States with a report setting forth: (1) the divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestiture has not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestiture. Following receipt of that report, the United States may make additional recommendations consistent with the purpose of the trust to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two business days following execution of a definitive divestiture agreement, Defendants or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of a proposed divestiture required by this Final Judgment. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within 15 calendar days of receipt by the United States of this notice, the United States may request from Defendants, the proposed Acquirer, other third parties, or the divestiture trustee additional information concerning the proposed divestiture, the proposed Acquirer, and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within 15 calendar days of the receipt of the request unless the United States provides written agreement to a different period.

C. Within 45 calendar days after receipt of the notice required by Paragraph VI.A. or within 20 calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI.B., whichever is later, the United States will provide written notice to Defendants and any divestiture trustee that states whether or not the United States, in its sole discretion, objects to Acquirer or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it

does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V.C. of this Final Judgment. Upon objection by Defendants pursuant to Paragraph V.C., a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section VI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

F. If at the time that a person furnishes information or documents to the United States pursuant to this Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give that person ten calendar days'

notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VII. FINANCING

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets made pursuant to this Final Judgment.

VIII. ASSET PRESERVATION OBLIGATIONS

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by the Court. Defendants must take no action that would jeopardize the divestiture ordered by the Court.

IX. AFFIDAVITS

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestiture required by this Final Judgment has been completed, Defendants each must deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, describing the fact and manner of Defendants' compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit must include: (1) the name, address, and telephone number of each person who, during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by

Defendants to prospective Acquirers must be made within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the divestiture has been completed.

D. Within 20 calendar days of the filing of the Complaint in this matter, Defendants also must each deliver to the United States an affidavit signed by each Defendant's Chief Financial Officer and General Counsel, that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If Defendants make any changes to the efforts and actions outlined in any earlier affidavits provided pursuant to Paragraph IX.D., Defendants must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to preserve the Divestiture Assets until one year after the divestiture has been completed.

X. APPOINTMENT OF MONITORING TRUSTEE

A. Upon motion of the United States, which Defendants cannot oppose, the Court will appoint a monitoring trustee selected by the United States and approved by the Court.

B. The monitoring trustee will have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by the Court and will have other powers as the Court deems appropriate. The monitoring trustee will have no responsibility or obligation for operation of the Divestiture Assets.

C. Defendants may not object to actions taken by the monitoring trustee in fulfillment of the monitoring trustee's responsibilities under any Order of the Court on any ground other than malfeasance by the monitoring trustee. Objections by Defendants must be conveyed in writing to the United States and the monitoring trustee within 10 calendar days of the monitoring trustee's action that gives rise to Defendants' objection.

D. The monitoring trustee will serve at the cost and expense of Defendants pursuant to a written agreement with Defendants and on terms and conditions, including terms and conditions governing confidentiality requirements and conflict of interest certifications, that are approved by the United States.

E. The monitoring trustee may hire, at the cost and expense of Defendants, any agents and consultants, including, but not limited to, investment bankers, attorneys, and accountants, that are reasonably necessary in the monitoring trustee's judgment to assist with the monitoring trustee's duties. These agents or consultants will be solely accountable to the monitoring trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, that are approved by the United States.

F. The compensation of the monitoring trustee and agents or consultants retained by the monitoring trustee must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the monitoring trustee and Defendants are unable to reach agreement on the monitoring trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the monitoring trustee, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring any agents or consultants, the monitoring trustee must provide written notice of the hiring and the rate of compensation to Defendants and the United States.

G. The monitoring trustee must account for all costs and expenses incurred.

H. Defendants must use their best efforts to assist the monitoring trustee to monitor Defendants' compliance with their obligations under this Final Judgment and the Asset Preservation Stipulation and Order. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the monitoring trustee and agents or consultants retained by the monitoring trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants may not take any action to interfere with or to impede accomplishment of the monitoring trustee's responsibilities.

I. The monitoring trustee must investigate and report on Defendants' compliance with this Final Judgment and the Asset Preservation Stipulation and Order, including ensuring Defendants' compliance with any transition services agreement. The monitoring trustee must provide periodic reports to the United States setting forth Defendants' efforts to comply with their obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The United States, in its sole discretion, will set the frequency of the monitoring trustee's reports.

J. The monitoring trustee will serve until the divestiture of all Divestiture Assets pursuant to this Final Judgment or until expiration of any transition services agreement pursuant to Paragraph IV.L., whichever is later, unless the United States, in its sole discretion, determines a shorter period is appropriate.

K. If the United States determines that the monitoring trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute.

XI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to this Section XI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7.

Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire 10 years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section XI, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give Defendants 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XII. NO REACQUISITION; LIMITATIONS ON JOINT VENTURES, PARTNERSHIPS, OR COLLABORATIONS

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment. In addition, Defendants may not, without the prior written consent of the United States, enter into a new joint venture, partnership, or collaboration, including any marketing or sales agreement, or expand the scope of an existing joint venture, partnership, or collaboration with Acquirer involving any digital do-it-yourself tax return preparation and e-filing products and services during the term of this Final Judgment. The decision whether to consent to any joint venture, partnership, or collaboration is within the sole discretion of the United States.

XIII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or

appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIV.

XV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and the continuation of this Final Judgment is no longer necessary or in the public interest.

XVI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

_____

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. INTUIT INC. and CREDIT KARMA, INC., *Defendants*.	Civil Action No.: 1:20-cv-03441-ABJ Judge Amy Jackson Berman

COMPETITIVE IMPACT STATEMENT

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) ("APPA" or "Tunney Act"), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 24, 2020, Defendant Intuit Inc. ("Intuit") agreed to acquire Defendant Credit Karma, Inc. ("Credit Karma") for approximately $7.1 billion. The United States filed a civil antitrust Complaint against Intuit and Credit Karma on November 25, 2020, seeking to enjoin the proposed transaction (Docket No. 1). The Complaint alleges that the likely effect of the proposed transaction would be to substantially lessen competition for digital do-it-yourself ("DDIY") tax preparation products used to help individuals file U.S. federal and state tax returns, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed an Asset Preservation and Hold Separate Stipulation and Order ("Stipulation and Order") (Docket

No. 2-1) and a proposed Final Judgment (Docket No. 2-2), which are designed to address the anticompetitive effects alleged in the Complaint. Under the proposed Final Judgment, which is explained more fully below, Credit Karma is required to divest its DDIY tax preparation business, known as Credit Karma Tax, including the assets needed to run that business.

Under the terms of the Stipulation and Order, Defendants are required to take certain steps to ensure Credit Karma Tax is operated as a competitively independent, economically viable, and ongoing business concern, which will remain independent and uninfluenced by Defendants, and that competition is maintained during the pendency of the required divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Intuit is a software company based in Mountain View, California that offers tax preparation, accounting, payroll, and personal finance solutions to individuals and businesses. Intuit offers DDIY tax preparation products under the TurboTax brand. Intuit, through its TurboTax business, is the largest provider of DDIY tax preparation products for U.S. federal and state returns.

Credit Karma is a privately held technology company based in San Francisco, California that offers an online and mobile personal finance platform. Credit Karma's platform provides individuals with access to free credit scores, credit monitoring, and DDIY tax preparation, among other products and services. Credit Karma's tax business,

known as Credit Karma Tax, is the fifth-largest provider of DDIY tax preparation products for U.S. federal and state returns.

On February 24, 2020, Intuit agreed to acquire Credit Karma in a transaction valued at approximately $7.1 billion.

B. Anticompetitive Effects of the Proposed Transaction in the Market for DDIY Tax Preparation Products

The Complaint alleges that the loss of competition in DDIY tax preparation products due to the proposed transaction would result in substantial harm to millions of U.S. taxpayers. The acquisition of a disruptive upstart by the dominant firm in DDIY tax preparation products would lead to a presumptively anticompetitive increase in market concentration. The Complaint further alleges that the proposed transaction would eliminate important head-to-head competition between Intuit and Credit Karma and an important constraint on Intuit in the market for the development, provision, operation, and support of DDIY tax preparation products.

1. The Relevant Market for Analyzing the Transaction's Anticompetitive Effects

The Complaint alleges that the relevant market for analyzing the effects of the proposed acquisition is the development, provision, operation, and support of DDIY tax preparation products ("the market for DDIY tax preparation products"). DDIY tax preparation products enable individuals to prepare their own U.S. federal and state personal income taxes on the provider's website or mobile application or using the provider's software installed on a personal computer.

The Complaint alleges that other methods of tax preparation, including hiring an accountant (i.e., "assisted tax preparation") and completing a tax return manually on paper (the "pen-and-paper" method), are not close substitutes for DDIY tax preparation products. Alternate methods of tax preparation do not offer comparable functionality or are less convenient, more cumbersome, or more expensive than DDIY tax preparation

products. Thus, the Complaint alleges that a hypothetical monopolist likely would impose at least a small but significant and non-transitory increase in the price of DDIY tax preparation products. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 4.1.1 (revised Aug. 19, 2010) ("Merger Guidelines"), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010. Other forms of tax preparation are not sufficiently substitutable to prevent such a price increase.

The Complaint alleges that the relevant geographic market for analyzing the effects of the proposed acquisition is worldwide. All major providers of DDIY tax preparation products for U.S. federal and state tax returns and most customers of such products are located in the United States. DDIY tax preparation products designed for filings in other parts of the world are not substitutes for DDIY tax preparation products designed for U.S. federal and state filings. Nonetheless, because many DDIY tax preparation products are provided over the internet, there appear to be no physical restrictions on the location of providers or customers of DDIY tax preparation products. Accordingly, the relevant geographic market for analyzing the proposed transaction is a worldwide market.

2. The Transaction is Presumed to Enhance Intuit's Market Power

The proposed transaction would significantly increase market concentration in the market for DDIY tax preparation products. The Complaint alleges that Intuit has a 66% market share and Credit Karma has a 3% market share. Market concentration is often a useful indicator of the level of competitive vigor in a market and the likely competitive effects of an acquisition. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in harm to consumers by meaningfully reducing competition.

Market concentration is typically measured by the Herfindahl-Hirschman Index ("HHI"). Markets in which the HHI is above 2,500 are considered highly concentrated.

Transactions that increase the HHI by more than 200 points and result in a highly concentrated market are presumed to be likely to enhance market power. *See* Merger Guidelines § 5.3.

Intuit's proposed acquisition of Credit Karma would further increase concentration in a market that is already highly concentrated, resulting in a post-acquisition HHI of over 5,000 points. As a result of the transaction, the HHI in the relevant market would increase by more than 400 points. These HHI measures indicate that the transaction is presumptively likely to enhance market power. *See* Merger Guidelines § 5.3.

As the Complaint alleges, these concentration measures understate the likely anticompetitive effects of the proposed transaction. As explained more fully in Section II.B.3 below, Credit Karma Tax has been a disruptive competitor in the market by offering its DDIY tax preparation product for free to consumers regardless of the complexity of their individual tax returns. Further, Credit Karma Tax is expected to continue to grow rapidly in the near future. Thus, current concentration measures in the market for DDIY tax preparation products understate Credit Karma Tax's competitive importance in the market.

3. The Transaction Would Eliminate Head-to-Head Competition Between Intuit and Credit Karma

The Complaint alleges that Intuit and Credit Karma compete directly against each other to provide DDIY tax preparation products to millions of U.S. taxpayers. For over a decade, Intuit has been the dominant DDIY tax preparation products provider. In 2017, Credit Karma entered the market with a completely free DDIY tax preparation product for U.S. taxpayers. Over the last four years, Credit Karma's free tax product has disrupted TurboTax's dominance in the market by winning over customers from TurboTax. In response to the competitive threat posed by Credit Karma, Intuit has lowered the price of

certain DDIY tax preparation products and expanded the scope and quality of services it offers to TurboTax users for free.

Since entering the market, Credit Karma has been a disruptive competitor to Intuit in DDIY tax preparation. Indeed, as the Complaint alleges, Intuit itself has recognized that Credit Karma has been its most disruptive competitor within DDIY tax preparation. Unlike any other provider, Credit Karma offers a completely free DDIY tax preparation product for a broad range of simple and complex U.S. and state tax returns. Credit Karma is able to offer its DDIY tax preparation product for free because it is paid by third parties when it successfully markets their offers for financial products, like credit cards or personal loans, to its customer base of over 100 million users. The data Credit Karma obtains from its users' tax filings helps Credit Karma better tailor offers for other products to its users. Credit Karma's users are more likely to accept tailored offers, which in turn, increases Credit Karma's commissions from the third parties.

Absent the proposed transaction, competition between Intuit and Credit Karma is expected to continue to increase in the future. As the Complaint alleges, Credit Karma Tax has grown significantly since its 2017 launch, serving over 2 million filers in 2020. In the coming tax seasons, Credit Karma Tax is expected to continue to grow and increase its market share, at the expense of TurboTax, as its product gains further traction in the market and as Credit Karma continues to improve and expand its tax product's functionality.

The Complaint, therefore, alleges that by eliminating the head-to-head competition between Intuit and Credit Karma, Intuit's proposed acquisition of Credit Karma would likely substantially lessen competition in the market for DDIY tax preparation products in violation of Section 7 of the Clayton Act.

4. Entry and Efficiencies Are Unlikely to Counteract the Proposed Transaction's Anticompetitive Effects

As the Complaint alleges, new entry or expansion in DDIY tax preparation products is unlikely to prevent the acquisition's anticompetitive effects. Apart from Credit Karma, no other companies have successfully entered the market for DDIY tax preparation products in over a decade. There are significant barriers to entry or expansion in DDIY tax preparation products, including the cost of developing and maintaining a robust, easy-to-use product, marketing costs to acquire and retain customers, and the time and expense needed to build a strong, trusted brand.

The Complaint also alleges that the anticompetitive effects of the proposed acquisition are not likely to be eliminated by any efficiencies the proposed acquisition may achieve.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the market for DDIY tax preparation products. The proposed Final Judgment requires Defendants, within 30 calendar days after the entry of the Stipulation and Order by the Court, to divest the products, intellectual property, and other related assets and rights that Credit Karma Tax uses to provide DDIY tax preparation products (collectively, the "Divestiture Assets"). The Divestiture Assets must be divested to Square, Inc., or to another acquirer approved by the United States, in such a way as to satisfy the United States in its sole discretion that the Divestiture Assets can and will be operated as a viable, ongoing business that can compete effectively in the market for DDIY tax preparation products. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly.

The proposed Final Judgment includes certain provisions to protect the viability of the Divestiture Assets during the transition of those assets to the Acquirer. As

explained in more detail below, the proposed Final Judgment requires Defendants to provide certain transition services during the 2021 tax filing season and restricts Defendants from taking certain actions that could threaten the viability of the Divestiture Assets while the acquirer prepares to independently operate the divested business.

A. Divestiture Assets and Employees

The proposed Final Judgment requires Defendants to divest the Divestiture Assets, which are defined in Paragraph II.F of the proposed Final Judgment. The Divestiture Assets will provide the acquirer with all of the assets and rights owned by or licensed to Credit Karma Tax, and all material assets and rights that are needed to run the Credit Karma Tax business in substantially the same manner as it had been run prior to the transfer. The Divestiture Assets include, among other things: all Credit Karma Tax products, including their underlying software and data; all intellectual property owned by Credit Karma Tax; all certifications and material contracts; copies of all books and records related to Credit Karma Tax; and copies of all marketing materials related to Credit Karma Tax.

The Divestiture Assets also include a worldwide, non-exclusive, irrevocable, perpetual license to all other intellectual property, except for Credit Karma trademarks, owned by Credit Karma or its subsidiaries that is used by the Credit Karma Tax business. Finally, the Divestiture Assets include a limited, non-exclusive license to use the Credit Karma trademarks for the Credit Karma Tax business during the 2021 tax filing season.

Further, under Paragraph IV.H of the proposed Final Judgment, the acquirer will, for up to 12 months after the date of the divestiture, have the right to hire any employees currently employed by Credit Karma Tax, or currently employed by Credit Karma who dedicated at least 50% of their total time to Credit Karma Tax at any point from October 1, 2019 to September 30, 2020. Defendants must provide the acquirer with information

on these employees and are prohibited from interfering with the acquirer's efforts to hire them.

B. Transition Services

The proposed Final Judgment requires Defendants to provide certain transition services to maintain the viability and competitiveness of the Credit Karma Tax business during its transition to the acquirer.

Paragraph IV.L of the proposed Final Judgment requires Defendants, at the acquirer's election, to enter into a transition services agreement, for a period of up to 24 months, for engineering, product support, data migration, information security, information technology, technology infrastructure, customer support, marketing, finance, accounting, and knowledge transfer related to the tax industry. Because the Divestiture Assets may be transferred to the acquirer during the 2021 tax filing season, the proposed Final Judgment allows certain transition services to extend beyond 12 months to give the acquirer sufficient time to integrate the Divested Assets into its existing business and to ensure customers can smoothly transition from Credit Karma Tax to the acquirer.

Under Paragraphs IV.M.2 and IV.M.4, for the 2021 tax filing season, Defendants must make the Credit Karma Tax website and mobile application available to consumers with the same level of functionality, availability, access, and customer support as Credit Karma provided during the year preceding the divestiture. This will ensure that Credit Karma Tax customers can continue to fully use these services when filing their 2020 tax returns, while providing the acquirer with the time necessary to integrate Credit Karma Tax into its own business and platform. For the 2021 tax filing season, Paragraph IV.M.1 of the proposed Final Judgment further requires Defendants to distribute acquirer-created marketing content to Credit Karma Tax filers at least as frequently as Credit Karma sent such communications between October 2019 and the date of the divestiture.

C. Marketing and Steering Prohibitions

The proposed Final Judgment contains provisions that limit Defendants' ability to steer customers away from the acquirer's tax business to TurboTax while Defendants fulfill their transition services obligations to the acquirer. These provisions will help ensure that Defendants do not degrade the competitiveness of the divested business while they are providing the transitional services.

For example, during the 2021 tax filing season, the proposed Final Judgment limits Defendants' ability to market TurboTax on the Credit Karma website and mobile application to certain Credit Karma users. During this period, Defendants may market TurboTax only to Credit Karma users that have not previously filed with Credit Karma Tax or shown an intent to use Credit Karma Tax, and only if Defendants also market Credit Karma Tax with equal prominence. Defendants cannot market TurboTax on the Credit Karma platform to any other users during this period. Further, during the 2021 and 2022 tax filing seasons, under Paragraph IV.O.2, Defendants may not directly target previous Credit Karma Tax filers with e-mail marketing related to TurboTax.

Similarly, Paragraphs IV.M.5 and IV.N.2 of the proposed Final Judgment limit Defendants' ability to redirect certain individuals to TurboTax from the Credit Karma website or mobile application. During the 2021 tax season, Defendants must redirect any person from the Credit Karma website or mobile application to the Credit Karma Tax website if the person has indicated an intent to use Credit Karma Tax. Defendants may not direct any such person to the TurboTax website. During the 2022 tax season, the same restrictions on redirection apply but only with respect to previous Credit Karma Tax filers.

Finally, Paragraphs IV.P–Q require Defendants to delete any user data collected from Credit Karma Tax filers that could be used by Defendants to identify any users as

Credit Karma Tax filers, except as necessary to provide transitional services to the acquirer.

D. Other Provisions

Section XII of the proposed Final Judgment prevents Defendants from reacquiring any part of or interest in the Divestiture Assets during the term of the Final Judgment. This section further prohibits Defendants from entering into or expanding any new joint venture, partnership, or collaboration with the acquirer related to DDIY tax preparation products during the term of the Final Judgment without prior written consent from the United States.

The proposed Final Judgment also contains provisions designed to promote compliance and make enforcement of the Final Judgment as effective as possible. Paragraph XIV.A provides that the United States retains and reserves all rights to enforce the proposed Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XIV.B provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to restore competition that the United States alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision

of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV.C of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV.C provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XIV.D states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United

States to the Court and Defendants that the divestiture has been completed and that continuation of the Final Judgment is no longer necessary or in the public interest.

E. Monitoring Trustee

Section X of the proposed Final Judgment provides that the United States may appoint a monitoring trustee with the power and authority to investigate and report on the Defendants' compliance with the terms of the Final Judgment and the Stipulation and Order. The monitoring trustee will not have any responsibility or obligation for the operation of the Defendants' businesses. The monitoring trustee will serve at Defendants' expense, on such terms and conditions as the United States approves, and Defendants must assist the trustee in fulfilling its obligations. The monitoring trustee will provide periodic reports to the United States and will serve until the later of the completion of the divestiture or the expiration of any transition services contract, unless the United States determines a shorter monitoring period is appropriate.

F. Divestiture Trustee

If Defendants do not accomplish the divestiture within the period prescribed in Paragraph IV.A of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the divestiture trustee's appointment, the divestiture trustee and the United States may make recommendations to the Court, which will enter such orders as

appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United

States will be filed with the Court and in the *Federal Register*, unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted to:

Robert A. Lepore,
Chief, Transportation, Energy, and Agriculture Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, NW, Suite 8000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Intuit's acquisition of Credit Karma. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the provision of DDIY tax preparation products in the United States. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final

Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a

court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Id.* at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.") (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting

"the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case"). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co*., 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see*

also U.S. Airways, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 10, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

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BRIAN HANNA
Attorney for the United States
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
Tel: (202) 598-8360
Email: brian.hanna2@usdoj.gov

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